

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

AT RICHMOND, DECEMBER 22, 1998

COMMONWEALTH OF VIRGINIA, <u>ex. rel.</u>)	
)	
STATE CORPORATION COMMISSION		CASE NO. SEC980083
v.		
D. H. BLAIR & CO., INC.,)	
)	
<u>Defendant</u>)	

SETTLEMENT ORDER

I.

FINDINGS OF FACT

1. The State Corporation Commission (the "Commission") has Jurisdiction over this matter pursuant to the Securities Act § 13.1-501 et. seq. of the *Code of Virginia* (the "Virginia Securities Act").

2. D.H.Blair & Co., Inc. (CRD No. 06833) ("D.H.Blair") is a broker-dealer so registered under the Virginia Securities Act.

3. D.H.Blair has cooperated with the state securities officials conducting a multi-state coordinated review (hereinafter the "Multi-state Committee") by, among other things, providing documentary evidence and other materials requested by the Multi-state Committee, and providing the Multi-state Committee access to the relevant facts relating to D.H.Blair.

4. D.H.Blair has agreed with the Multi-state Committee to resolve various concerns of the states through the entry of this Settlement Order.

5. The Commission has inquired into this matter and considered the relevant information provided by D.H.Blair to the Multi-state Committee.

6. D.H.Blair has, without admitting or denying the matters set forth therein, submitted a Letter of Acceptance, Waiver and Consent No. C10970167, dated August 13, 1997 (hereinafter "AWC"), to the National Association of Securities Dealers Regulation, Inc. (hereinafter "NASDR").

7. The AWC resulted in a censure and fine in the amount of two million dollars (\$2,000,000.00) along with restitution to retail customers in the amount of two million three hundred ninety-four thousand eight hundred fifty-seven dollars and twelve cents (\$2,394,857.12) and certain other remedial measures and individual sanctions.

8. D.H.Blair entered into a Consent Order, Exchange Hearing Panel Decision No. 97-9, dated February 12, 1997, with the New York Stock Exchange, Inc. (hereinafter the "NYSE Consent Order").

9. The NYSE Consent Order was executed on December 23, 1996, without prior trial, presentation of any evidence and without D.H.Blair admitting or denying the matters set forth therein. The NYSE Consent Order provided that D.H.Blair agree to a censure, a two hundred fifty thousand dollar (\$250,000.00) fine and an undertaking that it hire an independent consultant to review and prepare a report concerning D.H.Blair's systems and procedures to ensure compliance with the securities laws and exchange rules and that D.H.Blair adopt the recommendations of the report. This report was rendered on June 20, 1997 and D.H.Blair promptly incorporated the recommendations.

10. On April 17, 1998, D.H.Blair sold its assets, including transfer of certain brokers and client accounts, to Barington Capital Group L. P., a New York based broker-dealer. D.H.Blair has ceased broker-dealer activities and is in the process of winding up of its business.

11. On October 5, 1998 D.H.Blair entered into an agreement with the representatives of the Multi-state Committee, wherein D.H.Blair agreed to voluntarily segregate a claims fund in the amount of two million two hundred fifty thousand dollars (\$2,250,000.00) to be deposited in escrow to resolve claims of certain investors pursuant to an NASDR mediation/arbitration process. A copy of this agreement is attached hereto and incorporated herein by reference as Exhibit A.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Virginia Securities Act.

2. D.H.Blair, without admitting or denying the matters set forth therein, consented to the entry of findings by the NASDR in the AWC that it improperly priced certain securities, and failed to make adequate disclosure in order to make statements to certain aftermarket purchasers of certain securities not misleading, among other things.

3. The foregoing constitutes a violation of § 13.1-502 of the Virginia Securities Act as to paragraph II.2. above.

III. ORDER

THEREFORE, on the basis of the foregoing, and D.H.Blair's waiver of its right to a hearing and appeal under the Virginia Securities Act with respect to this Settlement Order, and D.H.Blair's admission of jurisdiction of the Commission, the Commission finds that D.H.Blair, for the sole purpose of settling this proceeding and without admitting or denying the matters set forth herein, has consented to the entry of this Settlement Order and that this Settlement Order is appropriate, in the public interest and necessary for the protection of investors.

IT IS ORDERED, that upon this Settlement Order becoming effective, D.H.Blair shall make available to former clients, the above-referenced two million two hundred fifty thousand dollar (\$2,250,000.00) fund and accrued interest, less escrow costs, for resolution of claims against D.H.Blair subject to the terms of Exhibit A attached hereto.

IT IS ORDERED that following the conclusion of its broker-dealer business, D.H.Blair may file a Form BDW with the Commission, thereby voluntarily withdrawing its broker-dealer registration but in any event shall not renew its broker-dealer registration at year-end, thereby allowing such to expire on December 31, 1998.

IT IS ORDERED, that this Settlement Order represents the complete and final resolution of, and discharge of any basis for any civil or administrative proceeding by the Commission against D.H.Blair, its officers, directors, shareholders, predecessors and subsidiaries, past and present, for violations arising as a result of or in connection with any actions or omissions by D.H.Blair, its officers, directors, shareholders, predecessors, subsidiaries and/or any of its associated or affiliated persons or entities, past and present; provided, however, this release does not apply to facts not known by the Commission or staff or not otherwise provided by D.H.Blair to the Multi-state Committee or the Commission or staff as of the date of this Settlement Order; provided, further, that this release does not apply to the sales practices of any individual in relation to soliciting investors' trades or accounts, but does apply to any action or omission by any officer, director or shareholder in their capacity as such.

IT IS ORDERED that this Settlement Order, except as to the parties hereto, does not limit or create any person's private remedies against D.H.Blair or others, or D.H.Blair's or others' defenses thereto.

IT IS ORDERED that, except as expressly provided in this Settlement Order, nothing herein is intended to or shall be construed to have created, compromised, settled, or adjudicated any claim, cause of action, or right of any person, other than as between the Commission and D.H.Blair in accordance with this Settlement Order.

IT IS ORDERED that this Settlement Order constitutes and includes a waiver based on a finding of good cause by the Commission of any and all limitations and disqualifications that may ensue from the entry of this Settlement Order, other state orders entered in this matter, the AWO and the NYSE Consent Order that would otherwise affect, restrict or limit the business of D.H.Blair and its predecessors, subsidiaries and affiliated persons or entities, past and present, or their ability to participate in offerings or avail themselves of exemptions, including, without limitation, the Uniform Limited Offering Exemption, as and to the extent now or hereafter adopted in Virginia.

IT IS ORDERED that this Settlement Order does not permanently or temporarily enjoin D.H.Blair or others, and is not intended to prohibit D.H.Blair or others from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, transfer agent, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

IT IS FURTHER ORDERED, that this Settlement Order shall become effective upon funding of the claims fund referenced in Exhibit A, attached hereto and incorporated herein by reference.

IT IS FURTHER ORDERED that this matter is dismissed from the Commission's docket and placed in the file for ended causes.